

Internal Revenue Service

Department of the Treasury
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Washington, DC 20224

Date 6/28/96

Person to Contact: [REDACTED]

Surname [REDACTED] 000

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

MAY 13 1996

Employer Identification Number: [REDACTED]

Key District Office: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. For the reasons stated below, we have concluded that you have failed to establish that you are exempt under that section. Your protest rights are also stated below.

You were incorporated under the laws of [REDACTED] on [REDACTED].

You plan to raise funds through the publication and sale of religious materials and through public donations for the purpose of constructing and operating a biblical history museum, a hotel, a conference center, and a multipurpose arena in downtown [REDACTED]. You represent that, once these enterprises are operating, [REDACTED] percent or more of their annual net profits will be donated to an unspecified number of charitable organizations.

Although you have stated that your first project will be to construct a museum of biblical history, you also state that you have been inactive since your formation in [REDACTED]. Further, you state that no projects will be initiated or staff employed until you have raised the \$[REDACTED] necessary to construct your initial project. You plan to hold all funds received for investment until this goal is met. You also are unable to provide an estimate regarding when you will begin operations. Neither are you able to provide specific descriptions of your proposed museum, hotel, conference center, and arena, nor have you described how these facilities will be operated.

You state that organizations who will receive donations will be selected at the discretion of your board of directors. You do not plan to establish any specific selection criteria other than

requiring that the organizations be nonprofit, tax-exempt, public service entities. You also state that you are unable to provide estimates as to the amounts of the donations or to identify the specific organizations to receive funding. In your letter of [REDACTED] to the Service, you stated that donations will not be made to other organizations until you have obtained sufficient funds to complete all [REDACTED] of the identified projects. In your letter of [REDACTED], you estimate that the amount of this fundraising goal is \$[REDACTED].

You also plan to market Christian educational, inspirational and training materials, including books, T-shirts, and plaques. Some of these materials have been developed by the president of your organization, [REDACTED], however this activity has not been initiated to date. You represent that all proceeds from the sale of these materials will go to your organization, rather than to [REDACTED]. The prices for the materials have yet to be determined.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of private shareholders or individuals.

Section 513 of the Code provides, in part, that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, to the exercise or performance of any purpose or function described in section 501(c)(3).

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

Section 8.01 of Rev. Proc. 96-4, 1966-1 I.R.B. 94, provides that the Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case.

Section 5.01 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that a determination letter will be issued to an organization only when its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Section 5.02 of Rev. Proc. 90-27, provides that exempt status "will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded."

Rev. Rul. 67-4, 1967-1 C.B. 121, sets forth the criteria that must be met for publishing activities to be classified as exempt under section 501(c)(3) of the Code. The content of the publication must be educational, the preparation of the materials must follow methods generally accepted as educational in character, distribution of the materials must be necessary or valuable in achieving the organization's exempt purpose, and the manner in which the distribution is accomplished must be distinguishable from ordinary commercial publishing practice.

Rev. Rul. 64-182, 1964-1 C.B. 186, described an organization whose charitable purposes were carried out by providing grants to other charitable organizations. Its income was derived from the leasing of commercial space in a building that it owned, maintained and operated. The ruling held that the organization qualified for recognition of exemption under section 501(c)(3) because the organization could demonstrate that it carried on a charitable program of providing grants to other charitable organizations that was commensurate in scope with its financial resources.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of its exempt purposes.

The information submitted in your application and in your subsequent responses to our development requests does not establish that you will operate exclusively for an exempt purposes. The deficiencies in your application are set forth below.

The facts in your administrative file are insufficient to make a determination that you are operated exclusively for charitable purposes. Although you state that your exempt purpose is to donate funds to charitable organizations, you have made no donations since your incorporation in [REDACTED]. Further, you do not have any plans to make donations to organizations at any time in the near future. Rather, your only current activity is to raise and invest funds. Thus, pursuant to Rev. Rul. 64-182, supra, you have not demonstrated that you are carrying on, or that you will carry on, a charitable program of providing grants to other organizations that is commensurate in scope with your financial resources.

In regard to your plans to construct and operate a museum, hotel, conference center and arena, such activities are commercial in character. In applying the requirements of section 1.501(c)(3)-1(e)(1) of the regulations, the facts submitted are insufficient to demonstrate that you will not be primarily engaged in operating these entities for a commercial purpose. Such activities do not further any exempt purpose within the meaning of section 501(c)(3) of the Code. Thus, you have not demonstrated that you are not primarily organized for the purpose of conducting an unrelated trade or business within the meaning of section 513.

In regard to your planned publishing activity, you have not provided sufficient information regarding the nature of the Christian educational materials, nor have you described how and where they will be sold. The information you have submitted is insufficient to demonstrate that this activity is distinguishable from ordinary commercial publishing, pursuant to Rev. Rul. 67-4, supra. Further, you represent that the income from the sale of these materials will be used to construct other businesses. Such purposes do not further any exempt purposes within the meaning of section 501(c)(3) of the Code. Thus, as provided in Better Business Bureau, supra, you are precluded from exemption under section 501(c)(3) because you are organized for the substantial non-exempt purpose of carrying on businesses.

Based on the foregoing, we hold that you have failed to establish that you are exempt from federal income tax under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on Form 1120.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code Section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: [REDACTED]
1111 Constitution Ave., N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Signed [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 2

cc: [REDACTED]

cc: [REDACTED]

May 10, 1996

5-10-96